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No. : 96-834

IN THE
SUPREME COURT
OF THE UNITED STATES

OCTOBER TERM 1996

ALDERIC JENSEN, SR. and DORIS JENSEN
Petitioners PRO SE

vs.

COUNTY OF LOS ANGELES

Respondent

On Petition for a Writ of Certiorari
To The California Supreme Court

PETITIONER'S REPLY BRIEF

ALDERIC JENSEN, SR. PRO SE
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11 pp

I.

QUESTION PRESENTED

Should certiorari issue:

(1) Where Los Angeles County violated the petitioners due process and equal protection rights ?

LIST OF PARTIES

1. PETITIONERS, ALDERIC JENSEN, SR. PRO SE
   DORIS JENSEN PRO SE

2. RESPONDENT, COUNTY OF LOS ANGELES

3. MARTIN ROY ROBLES
   ATTORNEY FOR RESPONDENT

4. DANIEL LUNGREN, ATTORNEY GENERAL OF THE STATE OF CALIFORNIA

5. PETER WILSON, GOVERNOR STATE OF CALIFORNIA

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Petitioner's Reply Brief

The petitioners,Alderic Jensen Sr. and Doris Jensen hereby briefly reply to their respondents' Brief in opposition as follows:

1.)The Respondent, County has mistated their facts of this case-The Federal Question was raised below:

The Respondent, County affirmatively states that the serious constitutional issues contained in their petition for writ were never raised below. See Respondents Brief at pg 4 ("No issue was raised...at the state trial court level as to the constitutionality...nor did they argue that respondent had acted unconstitutionally."); pg 6 ("absolutely no issue of federal law was addressed or applied in the decision below."); pg 7 ("The petition presents questions not raised by the petitioner below."); pg 8 ("The petitioner raises questions which were never raised below.")

The Respondent seeks to ignore the very clear Constitutional argument made by counsel at the trial court level:

> Now if the court is saying,geez,if we look at reasonable diligence and we say we're going to look within the sate only, well, then that would then shift to the County to say, "Well, they live---the next of kin lives in Hawaii, we verified that, theres nothing for us to do. We don't have to send one letter, we don't have to make one phone call. "I think that would violate, and I raised this earlier that would violate the Equal Protection Clause of both

> the California Constitution and the U.S. Constitution." (see petitioners Brief at pg A 39-40)

This transcript was a part of each of the appellate proceedings.

The serious federal question was not only raised specifically at the Trial Court level but is also a central issue obvious in the context of the proceedings throughout.

2.) The County was obliged to attempt reasonable notice.

The County admits that "reasonable diligence" in locating the next of kin is statutorily required. See Respondents Brief at pg 3 California Health and Safety Code §7104 specifically states:

> "if such person cannot **after reasonable diligence** be found within the state ...

Similarly, the Trial Court recognized this duty but stated that:

> "...even if...they found an address for somebody in another state. I don't believe statute puts a duty on them to go outside of the state...see Transcript at Petitioner's Brief A-45.

The Trial Court then stated:

> All right. I think the law here is--I don't know if its right or wrong. I mean, if this case goes up on appeal, it would seem to me that if, you know, if the State

> Knew, for instance, if there was a relative in another State, you know, it might be you send them a telegram or a letter but I don't think you can...impose that duty on them when the statute cuts it off. I think its for the Legislature to determine the way the County is to operate and that they have so determined, and that if what they have set forth is no longer something that fits today's modern world of faxes and mobile phone and everything else. **I don't know that its up to this court to read that into a statute which appears to be clear on its face."** see petitioners brief at p A-46.

This statutory obligation to make reasonable attempts at notification was not lost on the California appellate court which, in its decision dated June 19, 1996, stated:

> Government code section 2741 directed coroners to take custody of bodies and to make a "reasonable attempt to locate families within 24 hours." Petitioners Brief at pg A-8 and F.N.8. The court also recognized that California Health and Safety Code section 7100 provides. (a.) The **right** to control the disposition of the remains of deceased person devolves upon the following in the order moved... (b.) The surviving parent or parents of the decedent. See F.N.6 Petitioners Brief at pg A-6 and at pg A-9.

Finally, the appellate court recognized California Code Section 2741 which reads that the coroner-

> "shall make a reasonable attempt to locate their family. After a reasonable attempt the coroner may embalm..."

In this case the coroner actually obtained information which indicated the out-of-state address of the Decedents family. He apparently decided, however, that there was no duty to notify them simply because they were out-of-state. Such a reading blatantly violates their equal protection and due process rights of the out-of-state parent who was intitled to reasonable notice.

In the landmark case of Mullane v Central Hanover Bank and Trust Co.339 U.S. 307, 70 S. Ct. 652, 94 L.Ed. 865 (1950),this court stated, that before a state takes an action that

> will affect an interest in life, liberty or property protected by the Due process clause of the 14th amendment ...[it]...must provide notice reasonably, calculated under all the circumstances, to appraise interested parties of the pendency of their action... see 462 U.S. at 795, 103 S. Ct. at 2709, 77 L. Ed. 2d at 185.

Similarly, in the case of Mennonite Board of Missions v Adams 462 U.S. 791, 103 S. Ct. 2706, 77 L. Ed. 2d 180 (1983). This court stated:

> Notice by mail or other means as certain to ensure actual notice is a **minimal constitutional precondition** to a preceeding which will adversely affect the liberty or property interests of **any** party...See id. at 800, 103 S. Ct. at 2712, 77 L. Ed. at 188.

In Mennonite and Mullane this court was speaking of property rights in REAL ESTATE and MORTGAGES. How much more vigilant must our courts be when we are dealing with the Body of A Parents' son?

Judge Kalin apparently did not grasp this simple tenet of constitutional law when he refused to read this simple reasonable notice requirement into the relevant California Statutes.

3.) There is NO "RATIONAL BASIS" For Denying NOTICE TO IDENTIFIABLE OUT OF STATE RESIDENTS."

By restricting reasonable notice efforts to in-state families alone the County of Los Angeles and the California Courts violated their equal protection and Due process rights of the petitioners.

There can be no rational basis for failing to place a 32 cent stamp on an envelope to a parent of a decedent merely because that parent is found to live out of state.

Conclusion

For these and all of the above reasons the petitioners pray that this court grant certiorari.

Respectively submitted,

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January 31, 1997